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Date: January 11, 2007 Name: John G. Rauch

Signature:

Case No. 9623/594

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Kraft, Timothy, et al.

Serial No.: 09/832,434

Examiner: Yasin M. Barqadle

Filed: April 10, 2001

Group Art Unit: 2153

For: SYSTEM AND METHOD  
FOR MONTORTING  
THE INTERACTION OF  
RANDOMLY SELECTED  
USERS WITH A WEB  
DOMAIN

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This is an appeal from the Final Rejection dated December 15, 2005 of claims 1-23. Applicants respectfully appeal the final rejection entered by the examiner and provide this Appeal Brief in support thereof. The fee required under 37 CFR §§ 41.20(b)(2) and 41.37(a)(2) is included herewith.

**(1) REAL PARTY IN INTEREST**

The present application is owned by Overture Services, Inc.

**(2) RELATED APPEALS AND INTERFERENCES**

There are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on this appeal.

**(3) STATUS OF CLAIMS**

Claims 1-23 are pending herein, and are all appealed.

**(4) STATUS OF AMENDMENTS**

The claims were finally rejected in a Final Office Action, mailed December 15, 2005. A Request for Reconsideration was filed on April 17, 2006 after Final Rejection. The Advisory Action of May 24, 2006 indicates that the request for reconsideration was considered but does not place the application in condition for allowance.

The Request for Reconsideration did not include any amendments. The claims are presented in the form as finally rejected in the attached Appendix.

**(5) SUMMARY OF THE CLAIMED SUBJECT MATTER**

The present application relates to monitoring the interaction of randomly selected users with particular World Wide Web domains. In the past, one technique for monitoring user interaction involved use of a persistent client-side state to permit a server computer to store and retrieve information within a web browser used to access a web site by a computer. The server stores a unique value in each browser's cookie and makes a corresponding entry in its log file. The server then records the cookie associated with each browser request made to the applicable web site, thereby creating a log file associated with the site. Information relating to the user interaction with the site may be obtained by analyzing the file. (See ¶ [0005]).

This prior technique has been problematic because of the large amounts of data that can be produced by monitoring interaction of all users with a web site, and the

attendant cost of storing and analyzing that information. Further, stored log files may inaccurately represent user behavior. (See ¶ [0006]).

The present invention defined by claims 1-23 overcomes these problems by monitoring usage of only a sample population of users, rather than all users. (See ¶ [0008]).

Thus, claim 1 recites “a client component for determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population,” (*emphasis added*). (See Figure 1; ¶ [0008]). Then, “in the event said web browser is included within said sampled population,” the client component “transmit[s] usage data indicative of said interaction” (*emphasis added*). (See Figure 2; ¶ [0008]). Only if the user is within the sampled population does the user’s web interaction get monitored and saved. (See Figure 2; ¶ [0021]). Other dependent claims contain similar limitations. The specification and other claims provide details about how the sampled population is defined. For example the population may be randomly defined, or near-randomly defined. (See ¶ [0017]).

As explained in the specification at paragraph [0021], in accordance with some aspects of the present invention,

an instrumentation or data collection script [is] downloaded only to a randomly selected population of users interacting with a particular Web site. That is, the data collection script is not automatically requested from the content server 26 upon downloading of a tagged HTML page from the content server 26 to a browser 40. Instead, only HTML pages proved to web browsers 40 within the randomly selected set are instrumented with the data collection script from the monitoring server 24. This approach enables meaningful trends in user behavior to be discerned through analysis of only a fraction of the usage data that would otherwise be collected by the monitoring server 24. In addition, this technique advantageously reduces the cost of collecting and processing such usage data and preserves user anonymity relative to other methods by tracking the behavior of a relatively fewer number of users. (*emphasis added*)

## **(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1-23 stand rejected under 35 U.S.C. § 103(a) as being anticipated by U.S. patent number 6,112,240 to Pogue, et al. (“Pogue”) in view of U.S. patent number 2001/0020236 (“Cannon”).

## (7) ARGUMENT

### A. Rejection of Claims 1-7 and 13-23 under 35 U.S.C. 103(a) as being unpatentable over Pogue et al US PN. (6112240) in view of Cannon USPN. (20010020236)

#### 1. The Proposed Combination Does not Render Claim 1 Unpatentable

- a. Pogue and Cannon fail to disclose a system for monitoring usage of a web browser executed on a client computer, a client component for determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population, and wherein said population comprises a subset of a set of web browsers interacting with said content server.

Claim 1 was finally rejected in the Final Office Action of December 15, 2005 under 35 U.S.C. §103(a) as being obvious under Pogue in view of Cannon. Independent claims 8, 13, 17, and 21 include similar limitations. Appellants appeal the rejection for several reasons.

Claim 1 recites:

A system for monitoring usage of a web browser executing on a client computer during interaction with a content server, said system comprising:

**a client component for determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population and for transmitting usage data indicative of said interaction in the event said web browser is included within said sampled population wherein said sampled population comprises a subset of a set of web browsers interacting with said content server; and**

a monitoring server for receiving said usage data transmitted by said client component.

At least the **bolded passages** are not disclosed in Pogue or Cannon.

- 1. The cited art does not disclose or suggest “a client component for determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population.”**

The examiner acknowledges that Pogue does not disclose a sampled population. The examiner states, “[a]lthough Pogue et al show substantial features of the claimed invention, he does not explicitly show a sampled population of user.” (See Office Action, page 5). In order to overcome the deficiencies of Pogue, the office action seeks to rely on Cannon for the missing teaching, citing Cannon ¶0064 and ¶0133-0134.

The passage of ¶0064 the office action refers to states:

various embodiments of the present invention are contemplated to address readership information for magazines or newspapers as well as browsing information for individuals assessing web pages on the World Wide Web

and of ¶0133:

it should be noted that the concepts and techniques of the present invention are equally applicable to tracking and analyzing the behavior of a sample population for visitors to web pages on the World Wide Web

and of ¶0134:

any advertising firm/agency, business, or other organization that wishes to track large quantities of information regarding various sample populations can successfully implement the various techniques and methods described herein.

None of the referenced text of Cannon shows, describes or suggests “determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population.” The system in Cannon gathers data from all of Nielsen’s sampling devices and stores it in a database (see Cannon ¶0068-0072). There is no sampling of the type referred to in the currently pending claims. In claim 1, the sampled population is a subset of web browsers interacting with a server. In Cannon, the sample is a group of viewers, all of whom interact with television broadcasting and all of whose data is collected. This group is selected (“sampled”) from the total universe of

viewers of television. If the same type of “sampling” was applied in a system in accordance with claim 1, all web browsers visiting a web site would be selected from all persons interacting with the World Wide Web. That is not the case. Instead, in the system of claim 1, a user identification code is used to determine if a web browser is within a sampled population. Cannon does not do this.

Cannon states that the disclosed system may be used to address browsing information for individuals accessing World Wide Web pages ( ¶0064, ¶0133). However, Cannon does not disclose how this may be accomplished or how the sample is selected. The “sample” in Cannon refers only to the subset of television viewers who have the Nielsen equipment installed. But Nielsen’s data collection equipment does not interact with non-Nielsen viewers—those viewers don’t have the Nielsen equipment installed. So the Nielsen “sample” is not the same as the “sampled population [which] comprises a subset of a set of web browsers interacting with said content server” of claim 1.

Finally, a sampling system involving **television** viewers who know they have Nielson equipment installed provides a very different sample of users than web users having no knowledge that their activities are being tracked. The technique disclosed by Cannon does not suggest the sampling feature and the remaining features of the invention defined by claim 1.

Accordingly, even if the “sampling” suggestion of Cannon (mentioned only in a single paragraph of an application with more than 600 paragraphs) is combined with the conventional web site tracker of Pogue, the result fails to disclose all the limitations of the currently pending claims.

**2. Cannon (along with Pogue) fails to disclose “wherein said sampled population comprises a subset of a set of web browsers interacting with said content server,” as recited by claim 1.**

Neither Pogue nor Cannon include the element within claim 1 “transmitting usage data indicative of said interaction in the event said web browser is included within said sampled population wherein said sampled population comprises a subset of a set of web

browsers interacting with said content server.” The office action states that Pogue discloses this element. Applicant respectfully disagrees. Nowhere in the referenced sections of Pogue is there a disclosure of a “sampled population” as recited in claim 1. Furthermore, the examiner acknowledged earlier in the office action that Pogue does not disclose a sampling of users. (See Office Action, page 5).

The proposed combination of Pogue and Cannon as contemplated by the Examiner necessarily does not render independent claim 1, or any claim that depends on claim 1, unpatentable. Applicants request the rejection to claims 1-7 under 35 U.S.C. §103(a) be removed.

**b. There is no suggestion combine Cannon and Pogue**

The final office action states in part:

Giv[en] the teaching of Cannon, a person of ordinary skill would have readily recognized the desirability and the advantage of modifying Pogue et al by employing the advertising optimization system of Cannon

The Applicant respectfully disagrees. Even if combining Cannon and Pogue yields the elements of claim 1, it would be improper to combine these references. Pogue discloses “a method for obtaining client information relating to a web page in a World Wide Web site.” (See Abstract, lines 1-2). There is absolutely no method nor system in Pogue that even suggests gathering data from a sample of browsers. The principle operation of Pogue is to register every time every browser accesses every web page. Pogue records the activity of every browser each time the browser accesses each website. (Col. 4, lines 15-19). There is no suggestion to modify Pogue as contemplated by the Examiner to only include a sample of web browsers.

Furthermore, Cannon’s suggestion at ¶0133 to extend the “concepts and techniques” disclosed in Cannon to tracking a sample population of visitors to a web site fails to suggest the invention in accordance with claim 1. As described above, a sampling system involving television viewers who know they have Nielson equipment installed provides a very different sample of users than web users having no knowledge that their activities are being tracked. The sampling in Cannon is a predetermined sample of users

who are given a Nielson box. In accordance with the currently claimed invention, a client component determines sampling criteria and algorithms that determine whether or not a particular web browser should be included in the sample. (¶0022-¶0027). The proposed combination of Pogue and Cannon does not render independent claim 1, or any claim that depends on claim 1, unpatentable. Applicants request the rejection to claims 1-7 under 35 U.S.C. §103(a) to be removed.

**2. The Proposed Combination Does not Render Claim 13-23 Unpatentable**

**a. Rejection of claim 13 should be withdrawn**

The rejection of claim 13 and all claims dependent therefrom should be withdrawn for the same reasons stated for claim 1. Claim 13 includes limitations substantially similar to claim 1. Claim 13 describes a method while claim 1 describes a system. For the reasons stated above in conjunction with claim 1, the proposed combination of Pogue and Cannon does not render independent claim 13, or any claim that depends on claim 13 unpatentable. Applicants request withdrawal of the rejection of claims 13-16 under 35 U.S.C. §103(a).

**b. Rejection of claim 17 should be withdrawn**

Claim 17 was finally rejected in the Final Office Action of December 15, 2005 under 35 U.S.C. §103(a) as being obvious under Pogue in view of Cannon. Appellants appeal the rejection on the following grounds.

Claim 17 recites:

A method for monitoring user interaction with a web browser executing on a client computer, said method comprising the steps of:  
embedding, within a file, an address of a first server computer;  
downloading said file from a second server computer to said client computer;  
**determining whether a user identification code associated with said web browser indicates that said web browser is within a randomly selected subset of a set of web browsers interacting with said second server computer;**  
generating usage data indicative of said interaction in the event said web browser is within said randomly selected subset;  
transmitting said usage data to said first server computer; and

receiving said usage data at said first server computer and storing said usage data.

At least the **bolded** passage is not disclosed in Pogue or Cannon. Regarding the bolded passage, the office action states “identifier code related to user’s browser identifies the user browser and the client computer that is tracked col. 4, lines 6-15 and col. 6 lines 46-col. 7, line 10” of Pogue. (See Office Action, Page 9). The referenced sections are reproduced below:

Col. 4, lines 6-15:

The client computer 200, web server 304, and tracking computer 308 communicate through the Internet 295A. The browser 302 initiates access to the web site 306 by transmitting a browser request message to the web site 306. The browser request message includes a request to access the site, and a browser header that includes information relating to the browser 302 and client computer 200. This information may include the browser type and version, the type of client computer, and the operating system used by the client computer 200.

Col. 6, lines 46-col. 7 line 10:

When used with this implementation, the tracker 310 uses cookies and common gateway interface (CGI) scripts to obtain the client information. An exemplary tracking tag may be as follows: <img src="http://tracker.com/track?\_type=l> The second implementation begins at step 600 in which the web page is being formed for display by the browser 302 on the client computer 200. The web page may be formed in response to either a direct access, or by the selection of the BACK or FORWARD buttons in the browser 302. At step 602, the browser 302 then reads and executes the tracker tag, which causes a tracker message to be directed from the browser 302 to the tracker 310 on the tracking computer 308. As in the first implementation, the browser 302 cannot locate a file in the cache memory of the client computer 200 having the URL following the <IMG> tag, thereby causing the tracker message to be directed from the browser 302 to the tracker 310. This tracker message invokes the tracker 310, which responsively requests and receives the client information (step 604). The information may be obtained from information in the message header of the tracker message, which includes information relating to the browser 302 and client computer 200. In addition, the tracker 310 receives the last cookie, if any, that the web page received from the tracker 310. The cookie may include a unique identification number identifying the client computer 200 and/or the last web page in the web site 306 that was visited for such browser 302 on a specified client computer and the last web page accessed by such browser.

The above passages do not in any way even imply “determining whether a user identification code associated with said web browser indicates that said web browser is within a randomly selected subset of a set of web browsers interacting with said second server computer.” The system of Pogue merely collects minimal amounts of data but does not disclose a method of determining whether to collect such data based on certain criteria within the collection method. The current invention does. Further, as noted above, Pogue collects data from all browsers, not from any sample of browsers or even a *random* sample of browsers.

The office action also states: “[a]s for the subset of a set of browsers (sampled population of user (browser), see the rejection of claim 1 above. (See Office Action, page 9). The appellants respectfully disagree for the same reasons stated in the analysis of claim 1, above. Pogue and Cannon simply fail to disclose identifying members of “a randomly selected subset of web browsers.” For the foregoing reasons, the proposed combination of Pogue and Cannon necessarily does not render independent claim 17, or any claim that depends on claim 17 unpatentable. Applicant requests withdrawal of the rejection to claims 17-20 under 35 §103(a).

**c. Rejection of claim 21 should be withdrawn**

Claim 21 was finally rejected in the Final Office Action of December 15, 2005 under 35 U.S.C. §103(a) as being obvious under Pogue in view of Cannon. Applicant appeals the rejection. Pogue and Cannon fail to disclose all the limitations of independent claim 21.

Claim 21 recites:

An article of manufacture, which comprises a computer readable medium having stored therein a computer program carrying out a method for monitoring user interaction with a web browser, the computer program comprising:

- (a) a first code segment for determining that a user identification code associated with said web browser

indicates that said web browser is within a subset of a set of web browsers interacting with a content server;

(b) a second code segment for generating and enabling transmission of usage data indicative of said interaction in the event said web browser is within said subset.

At least the bolded portion of claim 21 is not disclosed in Pogue or Cannon, taken alone or in combination. Pogue and Cannon fail to disclose or suggest a user identification code that indicates a web browser is within a subset of web browsers. Moreover, Pogue and Cannon fail to disclose or suggest transmission of usage data if the web browser is within the subset.

The Final Office action refers to Pogue's cookie with user identification code being stored on tracked client computers. However, there is no suggestion that this cookie indicates that the web browser is within in a sampled population. There can be no such suggestion, because Pogue actually discloses monitoring interaction of all users with a web site. In Pogue's system, all browsers of all users are monitored in their interaction with the web page. Data collection occurs without any discrimination among users to limit users from whom data should not be collected.

The Final rejection relies on Cannon for the missing teaching regarding a sampled population or subset of users. However, in Cannon, all data are collected from all of Nielsen's sampling devices and stored in a database (Cannon, paragraphs [0068] – [0072]). There is no sampling of the type referred to in the currently pending claims. In claim 21, the sampled population is a subset of a set of web browsers interacting with a content server. In Cannon, the sample is a group of television viewers. All of the television viewers actively interact with television broadcasting. All of the data from all viewers is collected. Cannon just does not take a sample or a subset in the claimed manner.

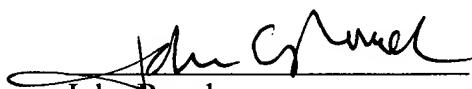
Accordingly, withdrawal of the rejection of independent claim 21 and allowance of this claim, along with dependent claims 22 and 23, are respectfully requested.

### (8) CONCLUSION

The cited references, either alone or in combination with the Examiner's assertions, do not provide a valid basis for a *prima facie* obviousness rejection of the present claims. Accordingly, Appellants submit that the present invention is fully patentable over Pogue et al. and Cannon and the Examiner's rejection should be REVERSED.

Respectfully submitted,

Dated: January 11, 2007



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**(viii) CLAIMS APPENDIX**

Claims 1-23 are pending.

**Listing of Claims**

This listing of claims will replace all prior versions and listings of claims in the application:

1. (Original) A system for monitoring usage of a web browser executing on a client computer during interaction with a content server, said system comprising:  
a client component for determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population and for transmitting usage data indicative of said interaction in the event said web browser is included within said sampled population wherein said sampled population comprises a subset of a set of web browsers interacting with said content server; and  
a monitoring server for receiving said usage data transmitted by said client component.
2. (Original) The system of claim 1 wherein said user identification code is stored on said client computer as persistent client side state information.
3. (Original) The system of claim 1 wherein said client component includes a sampling tag embedded within a web page provided to said web browser by said content server, said sampling tag determining whether persistent client side state information stored on said client computer includes identification information suitable for use as said user identification code.
4. (Original) The system of claim 3 wherein said sampling tag generates a random number corresponding to said user identification code in the event said

identification information is determined to be unsuitable for use as said user identification code.

5. (Original) The system of claim 4 wherein said random number is appended to said persistent client-side state information and thereby stored on said client computer as said user identification code.

6. (Original) The system of claim 3 wherein said client component further includes a data collection script, said sampling tag requesting said data collection script to be downloaded from said monitoring server to said client computer in the event that said user identification code indicates that said web browser is included within said sampled population.

7. (Original) The system of claim 3 wherein said random number is stored on said client computer as said user identification code in the form of a sampling cookie distinct from said persistent client side state information, said sampling tag determining whether said user identification code indicates that said web browser is included within said sampled population.

8. (Previously presented) A system for monitoring usage of first and second web browsers during interaction with a content server, said first and second web servers executing on first and second client computers, respectively, said system comprising:

a transmission channel;

a first client component communicatively coupled to said transmission channel, said first client component determining whether a first user identification code associated with said first web browser indicates that said first web browser is within a sampled population and transmitting a first set of usage data indicative of said interaction in the event said first web browser is included within said sampled population wherein said sampled population

comprises a subset of a set of web browsers interacting with said content server;

a second client component communicatively coupled to said transmission channel, said second client component determining whether a second user identification code associated with said second web browser indicates that said second web browser is within said sampled population and transmitting a second set of usage data indicative of said interaction in the event said second web browser is included within said sampled population; and

a monitoring sever coupled to said transmission channel, said monitoring server receiving any of said first set of usage data and said second set of usage data respectively transmitted by said first client component and said second client component.

9. (Original) The system of claim 8 wherein said first client component determines whether persistent client side state information stored on said first client computer and associated with said first web browser includes identification information suitable for use as said first user identification code.

10. (Original) The system of claim 9 wherein said first client component generates a random number corresponding to said first user identification code in the event said identification information is determined to be unsuitable for use as said first user identification code.

11. (Original) The system of claim 8 wherein said first client component includes a first sampling tag and a first data collection script, said first sampling tag requesting said first data collection script to be downloaded from said monitoring server to said first client computer in the event that said first user identification code indicates that said first web browser is included within said sampled population.

12. (Original) The system of claim 11 wherein said second client component includes a second sampling tag and a second data collection script, said second sampling tag requesting said second data collection script to be downloaded from said monitoring server to said second client computer in the event that said second user identification code indicates that said second web browser is included within said sampled population.

13. (Original) A method for monitoring usage of a web browser during interaction with a content server comprising the steps of:  
determining whether a user identification code associated with said web browser indicates that said web browser is included within a subset of a set of web browsers interacting with said content server;  
generating usage data indicative of said interaction upon determining that said web browser is within said subset;  
transmitting said usage data; and  
receiving and storing said transmitted usage data.

14. (Original) The method of claim 13 further including the step of storing said user identification code as persistent client side state information.

15. (Original) The method of claim 13 further including the step of determining whether persistent client side state information associated with said web browser includes identification information suitable for use as said user identification code.

16. (Original) The method of claim 15 further including the steps of generating a random number corresponding to said user identification code in the event said identification information is determined to be unsuitable for use as said user identification code, and determining whether said random number indicates that said web browser is included within said subset.

17. (Original) A method for monitoring user interaction with a web browser executing on a client computer, said method comprising the steps of:  
embedding, within a file, an address of a first server computer;  
downloading said file from a second server computer to said client computer;  
determining whether a user identification code associated with said web browser indicates that said web browser is within a randomly selected subset of a set of web browsers interacting with said second server computer;  
generating usage data indicative of said interaction in the event said web browser is within said randomly selected subset;  
transmitting said usage data to said first server computer; and  
receiving said usage data at said first server computer and storing said usage data.

18. (Original) The method of claim 17 further including the step of storing said user identification code within said client computer as persistent client side state information.

19. (Original) The method of claim 17 further including the step of determining whether persistent client side state information associated with said web browser includes identification information suitable for use as said user identification code.

20. (Original) The method of claim 19 further including the steps of generating a random number corresponding to said user identification code in the event said identification information is determined to be unsuitable for use as said user identification code, and determining whether said random number indicates that said web browser is included within said randomly selected subset.

21. (Original) An article of manufacture, which comprises a computer readable medium having stored therein a computer program carrying out a method for monitoring user interaction with a web browser, the computer program comprising:

- (a) a first code segment for determining that a user identification code associated with said web browser indicates that said web browser is within a subset of a set of web browsers interacting with a content server;
- (b) a second code segment for generating and enabling transmission of usage data indicative of said interaction in the event said web browser is within said subset.

22. (Original) The article of manufacture of claim 21 wherein said second code segment includes a third code segment for determining whether persistent client side state information associated with said web browser includes identification information suitable for use as said user identification code.

23. (Original) The article of manufacture wherein said 22 wherein said second code segment includes a fourth code segment for (i) generating a random number corresponding to said user identification code in the event said identification information is determined to be unsuitable for use as said user identification code, and (ii) determining whether said random number indicates that said web browser is included within said subset.

**(ix) EVIDENCE APPENDIX**

Applicant has submitted no evidence under 37 CFR § 1.130, 131 or 132, nor has the Examiner entered any evidence on which the Applicant relies. Therefore, no copies of such evidence are submitted.

**(x) RELATED PROCEEDINGS APPENDIX**

Applicant is aware of no relates appeals or proceedings. Therefore, no such information is submitted.